

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY**

ROUTE 24 SELF-STORAGE LLC	)	
	)	
Appellant/Defendant Below,	)	
	)	C.A. No. CPU6-19-000008
v.	)	
	)	
KELLY VAHEY and	)	
MICHAEL ZULINSKI,	)	
	)	
Appellees/Plaintiffs Below	)	

Submitted March 13, 2019  
Decided May 17, 2019

*James P. Sharp, Esq. for Appellant  
Kelly Vahey and Michael Zulinski, Self-Represented*

**DECISION ON APPEAL OF COMMISSIONER’S RECOMMENDATION**

On February 26, 2019 Appellant/Defendant below Route 24 Self-Storage LLC (“Route 24”) appealed the Commissioner’s Findings and Recommendation to dismiss Route 24’s Appeal *de novo* of a judgment entered against it in the Justice of the Peace Court. For the reasons stated below, the Commissioner’s Findings of Fact and Recommendation (“Recommendation”) is **ACCEPTED**, and Appellant’s appeal to this Court is **DISMISSED**.

**Procedural History and Facts**

Appellant Route 24 filed its notice of appeal with this Court on January 2, 2019. On January 8, 2019, this Court sent a letter to Appellant informing it that Delaware law requires all artificial entities to be represented by an attorney and that it had thirty days to retain counsel or the case would be dismissed. On February 19, 2019, after Appellant failed to retain counsel within that time, the Commissioner filed his Recommendation that the appeal from JP Court be dismissed. On February 21, 2019 counsel for Appellant filed

an entry of appearance in this matter, and on February 26, 2019 filed an Appeal of the Commissioner's Recommendation.

### **Standard of Review**

A Commissioner's recommendation to dismiss an action, obviously, is case dispositive.<sup>1</sup> The Court reviews objections made to case dispositive determinations *de novo*.<sup>2</sup>

### **Discussion**

An appeal of a Justice of the Peace Court judgment to the Court of Common Pleas must be filed and perfected within 15 days of the final judgment.<sup>3</sup> All artificial entities must be represented by counsel in lodging appeals from the Justice of the Peace Court with this Court.<sup>4</sup> A "notice of appeal filed on behalf of an artificial entity by a non-attorney deprives the court of jurisdiction,"<sup>5</sup> if not properly cured and perfected by an entry of appearance, and adoption of the notice of appeal, by a Delaware attorney within the required time. Here, no entry of appearance on behalf of Appellant was made, despite the Court's warning mailed to Appellant, until 50 days after the filing of the notice of appeal, and two days after the Commissioner's recommendation to dismiss the appeal.

The Court cannot grant relief for a failure to file, even if due to excusable neglect, that deprives the Court of jurisdiction over the matter. Even if it could, the Court finds the reasons given by Appellant for the late entry of appearance do not amount to excusable neglect.

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<sup>1</sup> Ct. Com. Pl. Civ. R. 112(A)(4).

<sup>2</sup> Ct. Com. Pl. Civ. R. 112(A)(4)(iv).

<sup>3</sup> 10 *Del.C.* § 9571

<sup>4</sup> Sup. Ct. Rule 57 (e); *See, Transpolymer Indus., Inc. v. Chapel Main Corp.*, 582 A.2d 936 (Table), 1990 WL 1682776, at \*1 (Del. Sept. 18, 1990)

<sup>5</sup> *Biddles Construction, LLC v. Seeley*, 2016 WL 6126251 at \*2 (Del. Super. Ct. 2016)

**Conclusion**

The Commissioner correctly recommended dismissal of this appeal. Therefore, the Commissioner's Findings of Fact and Recommendation is **ACCEPTED**, and Appellant Route 24's appeal of the Justice of the Peace Court's judgment is **DISMISSED**.

**IT IS SO ORDERED** this \_\_\_\_ day of May, 2019.

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**Kenneth S. Clark, Jr.**  
**Judge**